

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

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(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of O.C.G.A. § 48-7-29.16, which provides a credit for qualified education expenses. Other provisions and conditions regarding student scholarship organizations and the qualified education expense credit are set forth in O.C.G.A. § 48-7-29.16 and Chapter 2A of Title 20.

(2) **Definitions for purposes of O.C.G.A. § 48-7-29.16, Chapter 2A of Title 20, and this regulation.**

(a) "Qualified Education Expense Credit" means the credit allowed pursuant to O.C.G.A. § 48-7-29.16.

(b) "Fiscal Year" means the taxable year of the SSO.

(c) "Calendar Year Report" means the annual report that must be prepared on a calendar year basis and submitted to the Department of Revenue by January 12 as required by O.C.G.A. § 20-2A-3.

(d) "Audit Report" means the annual report that is prepared by an independent certified public accountant after completing the annual audit that is required by O.C.G.A. § 20-2A-2.

(e) "SSO" means a student scholarship organization as defined in O.C.G.A. § 20-2A-1.

(f) "Expenditure of Funds" means the expenditure of lawful money of the United States and does not include other intangible assets such as stocks, bonds, etc.

(3) Coordination of Agencies.

(a) Each SSO must annually submit notice to the Department of Education, in accordance with the Department of Education's guidelines, concerning their participation as an SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs that have provided notice.

(4) Annual Audit Report.

(a) O.C.G.A. § 20-2A-2 requires that an annual audit be conducted by an independent certified public accountant. The audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) The audit report must verify that the SSO obligated for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants.

(c) As is required by O.C.G.A. § 20-2A-3, the annual audit report shall be submitted to the Department of Revenue on or

before the January 12 date following completion of the audit report.

(5) Calendar Year Report.

(a) The calendar year report shall be submitted by the SSO by January 12. Form "IT-QEE-SSO2" shall be the form used to submit the report. The report shall be submitted electronically in the manner specified by the Department.

(b) The report shall be prepared on a calendar year basis regardless of the fiscal year of the SSO.

(c) The report shall include the following:

1. The total number and dollar value of individual contributions and qualified education expense credits preapproved, individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

2. The total number and dollar value of corporate and trust contributions and qualified education expense credits preapproved;

3. The total number and dollar value of scholarships awarded to eligible students;

4. A list of donors (which includes the donor's name and address), including the dollar value of each donation and the dollar value of each preapproved qualified education expense credit; and

5. A copy of the audit conducted pursuant to O.C.G.A. § 20-2A-2.

(d) The Department of Revenue shall post on its website a statistical compilation of the information received from the SSOs.

(6) Examples of the Timing of Reports.

(a) An SSO's first year begins on January 1, 2011, and ends on December 31, 2011. By January 12, 2012, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2011. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2012. The audit report submitted on or before January 12, 2013, will include the results of the audit for the year ending December 31, 2011.

(b) An SSO's first fiscal year begins on May 1, 2011, and ends on April 30, 2012. By January 12, 2012, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2011. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2012. The audit report submitted on or before January 12, 2013, will include the results of the audit for the fiscal year ending April 30, 2012.

(c) An SSO's first fiscal year begins on December 1, 2011, and ends on November 30, 2012. By January 12, 2012, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2011. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2012. By January 12, 2013, they must submit the required calendar year report for the calendar year that ended December 31, 2012. No audit report will need to be submitted for this second year since the due date for completing the audit report falls after the deadline of January 12, 2013. The audit report submitted on or before January

12, 2014, will include the results of the audit for the fiscal year ending November 30, 2012.

(7) **Failure to Report and Confidentiality.** Any SSO that does not submit the audit report or the calendar year report as required under this regulation or receives a qualified opinion or a disclaimer on their audit report from an independent certified public accountant or otherwise fails to comply with the requirements of Chapter 2A of Title 20 shall be given written notice of their failure and shall have 90 days from receipt of such notice to correct all deficiencies.

(a) If the SSO fails to correct all deficiencies within 90 days of receipt of notice from the Department, such SSO shall:

1. Be immediately removed from the Department of Education's list of approved SSOs.

2. Be required to cease all operations as an SSO and transfer all scholarship account funds to a properly operating SSO within 30 calendar days of receipt of notice from the Department of removal from the approved list; and

3. Have all applications for preapproval of tax credits under O.C.G.A. § 48-7-49.16 rejected by the Department on or after the date that the Department of Education removes the SSO from its list of approved SSOs.

(b) All information or reports provided by SSOs to the Department shall be confidential taxpayer information, governed by O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the SSO.

(8) Credit Limitations for Individuals and Corporations.

The amount of qualified education expense credit granted to a taxpayer shall not exceed:

(a) For an individual taxpayer, except as otherwise provided in this paragraph, the credit is limited to the lesser of the actual amount expended or the dollar amount provided in O.C.G.A. § 48-7-29.16.

(b) For an individual taxpayer filing a married filing separate return, the credit is limited to the lesser of the actual amount expended or \$1,250.00 per tax year.

(c) For a corporate or trust taxpayer, the credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's or trust's income tax liability. A trust cannot pass-through the credit to its beneficiaries.

(9) Credit limitations for pass-through entities. When the taxpayer is a pass-through entity, the intended contribution amount shall be allocated to the shareholders, partners, and members based on their profit/loss percentage. The credit limitations in O.C.G.A. § 48-7-29.16, and paragraph (8) of this regulation, shall be applied separately to the shareholders, partners, or members.

(10) Credit Cap. In no event shall the total amount of tax credits allowed under O.C.G.A. § 48-7-29.16 exceed \$50 million per calendar year. Beginning January 1, 2012, this calendar year limit shall be adjusted annually until January 1, 2018. This adjustment shall be based on the most recent annual percentage change in the Consumer Price Index for all Urban Consumers, U.S. City Average All Items Index, published by the Bureau of Labor Statistics of the United States Department of Labor, as determined by the Department. If the Department adjusts the calendar year

limit as provided in this paragraph, the adjusted calendar year limit shall be posted to the Department's website.

(11) **Reporting the Availability of the Credit.** The Department shall post on its website the current amount of qualified education expense credits available.

(12) **Preapproval of the Contribution.**

(a) Form IT-QEE-TP1 shall be used to request preapproval of the qualified education expense credit from the Department of Revenue. The Department shall implement a web-based preapproval process to file Form IT-QEE-TP1 electronically. Each SSO shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QEE-TP1.

(b) The contributor should not file Form IT-QEE-TP1 with the Department of Revenue until the contributor's recipient SSO is listed on the Department of Education's website. If the contributor's recipient SSO is not listed on the website at the time that the Department of Revenue attempts to verify the SSO's listing, the Department of Revenue shall deny the request. If at a later date the contributor's recipient SSO becomes listed, it will be necessary for a new Form IT-QEE-TP1 to be filed by the contributor with the Department of Revenue.

(c) Form "IT-QEE-TP1" shall include the following information:

1. The name of the SSO listed on the Department of Education's website to which the contribution will be made. The SSO should be listed on the Department of Education's website before the Form "IT-QEE-TP1" is filed with the Department of Revenue.

2. The taxpayer identification number of the SSO to which the contribution will be made.

3. The name, address and taxpayer identification number of the contributor.

4. The type of taxpayer.

5. If the contributor is an individual, the filing status.

6. If the contributor is an individual filing a joint return, the name and identification number of the joint filer.

7. The intended contribution amount.

8. If the contributor is a corporation or trust, 75% of the estimated income tax liability the corporation or trust expects for the tax year, of the corporation or trust, in which the contribution will be made.

9. Tax year end of the contributor.

10. Calendar year in which the contribution will be made.

11. Any other information the Commissioner of the Department of Revenue may require.

12. If the contributor is a Subchapter S corporation for Georgia purposes, or a partnership or a limited liability company treated as a partnership, such contributor must provide the information required by subparagraph (12)(c) of this regulation for each shareholder, partner, or member as well as the profit/loss percentage for each shareholder, partner, or member and the

amount of the intended contribution allocated to each shareholder, partner, or member based on the profit/loss percentage.

13. Certification that all information contained on the Form "IT-QEE-TP1" is true to his/her best knowledge and belief and is submitted for the purpose of obtaining preapproval from the Commissioner.

(d) The qualified education expense credit shall be allowed on a first-come, first-served basis. The postmark of the Form IT-QEE-TP1 or the date the Form IT-QEE-TP1 is electronically submitted shall be used to determine such first-come, first-served basis.

(e) The Department will notify each taxpayer and the taxpayer's selected SSO of the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QEE-TP1 was received.

(f) On the day any Form IT-QEE-TP1 is received for a calendar year that causes the calendar year limit in paragraph (10) of this regulation to be reached, then the remaining tax credits shall be allocated among the applicants who filed the Form IT-QEE-TP1 on the day the calendar year limit was exceeded on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.16 and this regulation. Only credit amounts on Form IT-QEE-TP1(s) received on the day the calendar year limit was exceeded shall be allocated on a pro rata basis.

(g) The contribution must be made by the taxpayer within sixty days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.

(h) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.16, then the amount of the qualified education expense credit shall not be preapproved or the preapproved qualified education expense credit shall be retroactively denied. With respect to such denied credit, tax and interest shall be due if the qualified education expense credit has already been claimed.

(i) Notwithstanding any laws to the contrary, the Department shall not take any adverse action against donors to SSOs if the Commissioner preapproved a donation for a tax credit prior to the date the SSO is removed from the Department of Education list pursuant to O.C.G.A. § 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § 48-7-29.16(f)(3).

(ii) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § 48-7-29.16, for such calendar year. If any Form IT-QEE-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(13) **Letter of Confirmation.** Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution.

(14) **Claiming the Credit.** A taxpayer claiming the qualified education expense credit, unless indicated otherwise by the Commissioner, must submit the Form IT-QEE-SSO1 and Form IT-QEE-TP2 with the taxpayer's Georgia tax return when the qualified education expense credit is claimed.

(15) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form

IT-QEE-SSO1 shall be required to be attached to the return only if the Internal Revenue Service allows such attachments when the data is transmitted to the Department. In the event the taxpayer files an electronic return and such information is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such information shall be maintained by the taxpayer and made available upon request by the Commissioner.

(16) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraphs (8) and (9) of this regulation shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(17) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.16(h)(1) provides that no qualified education expense credit shall be allowed under O.C.G.A. § 48-7-29.16, with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal charitable contribution deduction taken on a federal return for which a Georgia qualified education expense credit is allowed under O.C.G.A. § 48-7-29.16.

(18) **Pass-Through Entities.** In the event the qualified education expense credit is passed through to shareholders, partners, or members, such credits shall be available for use as a credit in the shareholders', partners', or members' tax year in which

the tax year of such Subchapter S corporation, partnership, or limited liability company ends. For example: A partnership earns the qualified education expense credit for its tax year ending January 31, 2012. The qualified education expense credit is available for use by the individual partner beginning with the calendar 2012 tax year.

(19) Scholarships.

(a) For all scholarships including multi-year scholarships, the SSO shall deliver the scholarship check directly to the private school selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian of the student shall come to such private school and restrictively endorse the check to such private school for deposit into the account of such private school as is required by O.C.G.A. § 20-2A-5. Such private school shall not be allowed to endorse the check over to a different private school.

(b) In the event an SSO awards a multi-year scholarship, the SSO may disburse the entire scholarship at the time the scholarship is awarded.

(c) For all scholarships including multi-year scholarships, the private school shall separately account for each scholarship awarded. Additionally, the income earned on the portion of the scholarship which has not yet been applied to tuition shall be separately accounted for and shall be used to provide tuition for such eligible student. The scholarship shall be applied to tuition on the same due dates as the general population of students of such school.

(d) Should such student cease attending such school before the end of the multi-year period, the school shall return to the SSO the portion of the scholarship that pertains to any school year that has not yet started and the income earned on such portion. If the

cessation date occurs on or before the first tuition due date of the general population of students of such school, such amounts shall be returned within 30 days after the first tuition due date of the general population of students of such school. However, if such school transfers the funds to a new eligible student on or before the first tuition due date of the general population of students of such school, such amounts shall not be required to be returned. If the cessation date occurs after the first tuition due date of the general population of students of such school but before the start of the school year, such amounts shall be returned within 30 days of such cessation date. Upon receipt of such returned scholarship, such SSO shall allocate and obligate such money for scholarships or tuition grants as soon as practical as provided in Chapter 2A of Title 20 of the O.C.G.A. except that 100% of such returned money and 100% of any income earned on such returned money shall be allocated and obligated. Once a private school receives such returned money and such income earned on such returned money, 100% of such amounts received shall be used for an eligible student.

(20) **Designation of Contributions.** A contribution directly or indirectly designated for a particular individual, whether such individual is a dependent of the taxpayer or not, is considered made to the individual and not to the SSO and as such is not eligible for the qualified education expense credit. This is consistent with the federal treatment of charitable contributions.

(21) **Effective Date.** This rule is applicable to years beginning on or after January 1, 2011. Years beginning before January 1, 2011 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2011 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.16.